

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

In the Matter of:

Case No. 06-RC-257382

S.E.I.U. HEALTHCARE PENNSYLVANIA,

Petitioner,

and

TWINBROOK HEALTH AND
REHABILITATION CENTER,

Employer

**EMPLOYER'S EMERGENCY MOTION TO POSTPONE THE
REPRESENTATION HEARING AND TO POSTPONE THE DEADLINE FOR
SUBMITTING THE EMPLOYER'S STATEMENT OF POSITION FORM**

Twinbrook Health and Rehabilitation Center ("Employer") requests the hearing in this matter currently scheduled for April 27, 2020 be postponed. Employer also requests a postponement of the deadline to file its Statement of Position form. In support of this emergency motion, Employer shows as follows:

A timeline of pertinent events and activity is:

- On March 1, 2020, President Trump proclaimed that the COVID-19 outbreak in the United States constitutes a National Emergency;
- On March 6, 2020, Pennsylvania Governor Thomas Wolf reported Pennsylvania's first two confirmed cases of COVID-19 and proclaimed the existence of a disaster emergency throughout the Commonwealth as a result of the COVID-19 pandemic;
- On March 11, 2020, Employer and Petitioner agreed to a Stipulated Election Agreement which provided for a manual, secret-ballot election to be held under the National Labor Relations Board's ("Board") Rules and Regulations under the

supervision of the Regional Director on March 30, 2020 at Employer's facility located at 3805 Field Street in Erie, Pennsylvania ("Twinbrook facility");

- On March 13, 2020, visitation and access to the Twinbrook facility was restricted as part of the facility's COVID-19 preparedness and response plan;
- On March 13, 2020, President Trump declared a national emergency and stated that "[t]he spread of COVID-19 within our Nation's communities threatens to strain our Nation's healthcare systems ... It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and *be prepared to surge capacity and capability.*" (Emphasis added);
- On March 17, 2020, a "no visitor policy" was implemented for correctional facilities and nursing homes statewide;
- On March 17, 2020, Employer received a formal order from the Regional Director "given the current situation" of the approved postponement of the election scheduled for March 30, 2020 until the Regional Director contacts all parties "in the near future to determine how to proceed";
- On March 17, 2020, the Regional Director confirmed "mail ballot elections will be conducted only with the agreement of all parties. This is pursuant to specific guidance from the General Counsel. Absent agreement, a hearing would be necessary in order to direct a mail ballot election. All hearings are also currently postponed until at least April 1.";
- On March 18, 2020, the Pennsylvania Department of Health reported the Commonwealth's first COVID-19 related death;

- On March 19, 2020, Christopher Krebs, Director of Cybersecurity and Infrastructure Security Agency, US Department of Homeland Security (CISA) published a memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, stating “If you work in a critical infrastructure industry ... such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your work schedule.”;
- On March 19, 2020, Pennsylvania Governor Thomas Wolf requested a major disaster declaration from President Trump through the Federal Emergency Management Agency stating “the COVID-19 outbreak has taxed our Commonwealth and our communities in ways that are almost incomprehensible.”;
- On March 19, 2020, Pennsylvania Governor Thomas Wolf and Secretary of the Pennsylvania Department of Health Rachel Levine, MD, each issued orders directing the closure of all the Commonwealth’s non-life sustaining businesses;
- On March 19, 2020, the Board temporarily suspended all Board-conducted elections through April 3, 2020;
- On March 23, 2020, Pennsylvania Governor Thomas Wolf issued a stay-at-home order to remain in effect until April 6, 2020;
- On March 24, 2020, Erie, Pennsylvania Mayor Joseph Schember issued a State of Emergency declaration for the city stating it “is necessary to protect city residents.”;
- On April 1, 2020, Pennsylvania Governor Thomas Wolf extended the stay-at-home order across the entire state effective that evening;
- On April 1, 2020, the Board issued notice that beginning April 6, 2020, Regional offices would resume processing elections;

- On April 7, 2020, Petitioner filed a Motion to Order Mail Ballot Election;
- On April 10, 2020, Employer filed its Response to Motion to Order Mail Ballot Election;
- By email correspondence on April 15, 2020, Petitioner withdrew its then pending Motion for a Mail Ballot Election, without prejudice, and requested the Regional Director revoke her prior approval of the Stipulated Election Agreement and immediately schedule a telephonic hearing on Petitioner's Representation Petition;
- On April 16, 2020, Employer filed its Response to Petitioner's Request for Regional Director to Revoke Prior Approval of the Parties' Stipulated Election Agreement and To Schedule Telephonic Hearing on Representation Petition;
- On April 16, 2020, the Regional Director issued the Order Revoking Approval of Stipulated Election Agreements and Second Notice of Representation Hearing and (i) scheduled a hearing in this case for April 27, 2020 at 9:00 a.m. by telephone; (ii) ordered the Statements of Position to be filed no later than noon on April 24, 2020; and (iii) scheduled a pre-hearing teleconference for April 24, 2020 at 2:00 p.m. ("April 16 Order"); and,
- On April 20, 2020, Pennsylvania Governor Thomas Wolf extended Pennsylvania's stay-at-home order through May 8, 2020.

As stated in Employer's initial response to the Regional Director on March 17, 2020 in this matter, incorporated herein by reference, and in its Response to Petitioner's Motion to Order Mail Ballot Election filed on April 10, 2020, incorporated herein by reference, it is Employer's position that the election related proceedings in this matter should be postponed until Employer, an essential workplace during unprecedented times of crisis management and national

emergency, is clear of this immediate COVID-19 crisis. Employer has not – and will not – consent to a mail ballot election.

The Twinbrook facility provides individualized post-hospital skilled nursing care. The specialty services provided at Twinbrook include hospice care, palliative care, pain management, long-term care, alzheimer's and dementia care, wound care, dialysis care, IV therapy, onsite radiology, physical therapy, occupational therapy, speech therapy, and incontinence therapy. Employer is unquestionably an "Essential Employer" in long-term care (healthcare) as defined by both the Commonwealth of Pennsylvania and CISA. As an essential business, Employer is obligated to maintain the safety, health and welfare of its residents and employees during the COVID-19 pandemic. As described in the Center for Disease Control (CDC) revisions to Clinical Care Guidelines for Healthcare Practitioners published on April 3, 2020, involved employers must maintain heightened focus to ensure the awareness of asymptomatic and pre-symptomatic conditions, where epidemiologic studies have demonstrated the transmission during pre-symptomatic incubation periods. Further, the CDC has instructed healthcare organizations like Employer to follow a strict clinical course of action to address the risk factors for severe illness. In sum, all of the mandates issued by federal and state government make it essential for a healthcare provider such as Employer to maintain its heightened awareness and clinical care protocol **without unwarranted, non-essential distraction**. Forcing Employer, the owner and operator of a long-term care facility, to spend time and to dedicate critical management and operational resources to prepare for and proceed with the scheduled April 27, 2020 hearing, as well as to comply with the Statement of Position filing deadline and to participate in the pre-hearing conference are all **unwarranted, non-essential distractions** for Employer during the COVID-19 pandemic.

Vulnerable populations, like long-term care residents, are increasingly in harms' way. Clearly, infectious disease outbreaks are a danger to adults in long-term care even in ordinary times, but these are not ordinary times! It is indisputable that elderly people in long-term care facilities are at high risk of dying from COVID-19 and the risk of transmission of the virus is also especially high at long-term care facilities. As such, the caregiving staff are at elevated risk from COVID-19. Vigilance about the safety, health and welfare of facility residents is essential not only for their health, but also to protect the healthcare system from becoming overwhelmed by severe COVID-19 cases. "If COVID-19 sweeps through a single long-term care facility, this surge in caseload could overwhelm local hospital capacity." *See The Coronavirus and the Risks to the Elderly in Long-Term Care.* Journal of Aging and Social Policy (2020). Local hospitals are already under severe strain due to an influx of coronavirus patients during this current pandemic. Employer's time and resources cannot be diverted for purposes of complying with the Regional Director's April 16 Order.

Further, ensuring a fair and informed electorate cannot be ignored in the haste of pressing forward in this case. The only means to achieve this important statutory goal is to ensure that all employees are fully informed by both Petitioner and Employer about the arguments concerning representation so they can freely and fully exercise their Section 7 rights under the National Labor Relations Act. The interest in furthering the fair and free choice of bargaining representative by encouraging an informed employee electorate can only be accomplished by allowing both Petitioner and Employer the right and opportunity to address employees. Under the current COVID-19 pandemic circumstances where Employer must be singularly focused on the safety, health and welfare of its residents and employees, Employer cannot undertake efforts or divert time and resources to engage with employees regarding representation. Consequently,

it cannot be presumed that Employer can access employees directly for the purpose of ensuring employees are informed of their Section 7 rights. As such, the potential consequences of ignorance cannot be eliminated. In sum, no “fair and informed electorate” can be achieved at the Twinbrook facility until the COVID-19 pandemic subsides.

Under the current circumstances, the most appropriate course of action is the postponement of the April 27, 2020 hearing and the related pre-hearing deadlines. Significantly, Petitioner has not offered any reason to demonstrate there is an urgency to proceeding as Petitioner suggests and the Regional Director’s April 16 Order requires when all of the countervailing considerations weigh in Employer’s favor. Notably, Petitioner has not proffered any argument that the employees at the Twinbrook facility are pressing for the proposed course of action in the current crisis environment. Also important is the fact that Employer is 100% focused on its efforts to maintain the safety, health and welfare of its residents and employees during this extraordinary circumstance and is not engaging in any anti-union campaign. Also, personnel whom Employer would need to participate at the April 27, 2020 representation hearing are directly involved in managing Employer’s response to the national COVID-19 emergency and it would impose a tremendous strain on Employer’s resources to have the attention of such personnel diverted from their mission to prepare for and participate in the April 27, 2020 hearing and the related pre-hearing activities. Proceeding as required by the Regional Director’s April 16, 2020 Order presents an **unwarranted, non-essential distraction** for Employer. This is, in reality, a matter of life and death.

Employer stands committed to ensuring the safety, health and welfare of its residents and employees during this unprecedented crisis. Employer appreciates and respects its employees in their rights as prescribed by federal and state law as it pertains to unionization and looks forward

to concluding an election by the manual secret ballot process once this emergency crisis and the threat it presents to the Twinbrook facility, its residents and employees has subsided.

For all of the reasons set forth herein, Employer respectfully requests that the April 27, 2020 hearing be postponed and the related deadline for submitting the Employer's Statement of Position form be postponed.

Respectfully submitted,

BURNS WHITE LLC

Dated: April 22, 2020

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**EMPLOYER'S CERTIFICATE OF SERVICE OF
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The undersigned certifies that Employer's Emergency Motion to Postpone the Representation Hearing and to Postpone the Deadline for Submitting the Employer's Statement of Position Form in Case No. 06-RC-257382 was e-filed with Region 6 by the National Labor Relations Board's official e-file system and, on April 22, 2020, a copy was served on the following via email:

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BURNS WHITE LLC

Dated: April 22, 2020

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